IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

FRIDAY, THE 25TH MAY 2007 / 4TH JYAISHTA 1929

OP.No. 20605 of 2000(C)

PETITIONER:

T.SOMASEKHARAN NAIR, T.C.NO.50/1453,
BEENAS, THALIYAL, KARAMANA P.O.,
THIRUVANANTHAPURAM.

BY ADV. SRI.GOPAKUMAR R.THALIYAL

RESPONDENTS:

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1. THE SECRETARY, STATE INSTITUTE OF RURAL DEVELOPMENT E.T.C. (P.O.), KOTTARAKARA, KOLLAM DIST.

2. STATE OF KERALA REPRESENTED BY THE COMMISSIONER & SECRETARY, RURAL DEVELOPLMETN DEPARTMENT, GOVT. SECRETARIAT, THIRUVANANTHAPURAM.

3. THE DIRECTOR, STATE INSTITUTE OR RURAL DEVELOPMENT, KOTTARAKARA, KOLLAM DIST.

BY GOVERNMENT PLEADER SMT.T.B.RAMANI

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 25/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP NO.34505 OF 2000 IN OP NO.20605 OF 2000 C

//DISMISSED//

25.05.2007. SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE.

APPENDIX

PETIITONER'S EXHIBITS:

EXT.P1: TRUE COPY OF COMMUNICATION DATED 16.5.95 ISSUED BY 1ST RESPONDENT TO THE PETITIONER.

EXT.P2: TRUE COPY OF COMMUNICATION NO.268/D/95/SIRD DATED 31.5.95 ISSUED BY 1ST RESPONDENT TO THE PETITIONER.

EXT.P3: TRUE COPY OF AGREEMETN ON CONTRACT APPOINTMENT AS LIBRARIAN DATED 3.7.95 BETWEEN PETITIONER & 1ST RESPONDENT.

EXT.P4: TRUE COPY OF ORDER NO.268/D/95/SIRD DATED 1.7.96 ISSUED BY 1ST RESPONDENT TO THE PETITIONER.

EXT.P5: TRUE COPY OF ORDER NO.268/D/95/SIRD DATED 23.3.99 ISSUED BY 1ST RESPONDENT TO THE PETITIONER.

EXT.P6: TRUE COPY OF ORDER G.O.(P) NO.1088/98/FIN. DATED 23.3.98 ISSUED BY PRINCIPAL SECRETARY (FINANCE) GOVT. OF KERALA.

EXT.P7: TRUE COPY OF REPRESENTATION OF PETITIOENR TO 1ST RESPONDENT DATED 25.3.99.

EXT.P8: TRUE COPY OF REPRESENTATION OF THE PETITIONER TO 1ST RESPONDENT DATED 14.9.99.

EXT.P9: TRUE COPY OF REPRESENTATION OF THE PETITIOENR TO 1ST RESPONDENT DATED 17.12.99.

EXT.P10: TRUE COPY OF JUDGMENT IN O.P.NO.9551/2000 K DATED 28.3.2000 HIGH COURT OF KERALA.

EXT.P11: TRUE COPY OF ORDER NO.268/D/95/SIRD DATED 16.6.2000 ISSUED BY 1ST RESPONDENT TO THE PETITIONER.

/TRUE COPY/

THOTTATHIL B.RADHAKRISHNAN, J.

O.P.No.20605 OF 2000

Dated this the 25th day of May, 2007

JUDGMENT

The petitioner retired from the service of the Kerala University on 31.3.1993 on superannuation. At the time of retirement, he was working as a Selection Grade Assistant Librarian in the Kerala University Library. After retirement, he applied for being considered for appointment as Librarian on contract basis in the State Institute of Rural Development, which is an institution funded by the Government of Kerala and the Ministry of Rural Development in the Government of India. It had set apart certain funds for upgradation of library facilities which necessitated the invitation of applications for appointment of Librarian on contract basis. It is explicit from Ext.P1, the communication of the Institute requesting the petitioner to be present for an interface, that the notification on the basis of which the petitioner applied for consideration, the interface and the appointment were only on contract basis. Ext.P2 communication clearly states that the petitioner is appointed for

a period of one year at the first instance on contract basis. Ext.P3 is the agreement entered into between the petitioner and the Institute evidencing the contract between them. The different clauses categorically show that the appointment was nothing but on contract basis and the petitioner is not eligible for any service benefits other than the emoluments as agreed to in clause (ii).

2. After having worked for one year on the basis of Ext.P3, the petitioner expressed his willingness to renew the period of contract for a further period of one year. This annual renewal of the contract between the petitioner and the Institute, resulting in his engagement on contract basis, continued until Ext.P5 was issued on 22.3.1999, while the petitioner's service thus came to an end in the Institute.

3. The termination is only the termination of the contract employment and it gives him no right other than the entitlement to insist for the statutory notice as agreed to between the parties

in Ext.P3 agreement and consequential agreement, if any, or for appointment in lieu of notice. However, relying on Ext.P6 G.O. (P) No.1088/98/Fin. dated 23.3.1998, the petitioner made Ext.P7 representation to the secretary of the Institute, invoking the provisions of Rule 100 of Part III KSR and requesting revision of pay and other benefits. He followed it up with Exts. P8 and P9 representations and even by a writ petition, which resulted in a direction for disposal of those representations. Ultimately, the Institute came out with the impugned Ext.P11 decision informing the petitioner that his request for revision and disbursement of re-employment pay and other benefits in terms of the aforesaid Government Order is inadmissible in terms of the conditions/rules of the Institute and its rules relating to the appointment of the petitioner. The Institute, accordingly, rejected his claim. This writ petition is filed challenging the said decision of the Institute and seeking issuance of a direction to pay to the petitioner arrears of pay and allowances as claimed by him as stated above, with interest at 18% for alleged delayed payment.

4. The Director of the Institute, through the faculty member, has filed a counter affidavit taking the clear stand that the parties are regulated by the terms of Ext.P3 agreement and there is no ground to grant any emoluments other than those agreed to in clause (ii) thereof. It is also specifically pleaded by the contesting respondents that Rule 100 of Part III KSR does not apply.

5. Rule 100 of Part III KSR is part of Section 2 dealing with re-employment of civil pensioners in Chapter VII governing re-employment of pensioners. Firstly, Chapter VII of KSR Part II cannot be pressed into service in relation to the Institute for the primary and fundamental reason that the said Institute is not part of the Government. It is also not the service of a local fund. It is an Institution that is funded by the Union of India and the State Government. There is neither any plea nor is it pointed out that KSR apply mutatis muntandis or has been applied by the Institute to be part of those rules that govern it. That apart, the

quality of the appointment of the petitioner with the Institute is only a contract appointment, as already noticed. The invitation extended by the Institute was to persons who were willing to work on contract basis. The petitioner appeared for an interface on the invitation in the specific purpose of being considered for appointment on contract basis. The terms of Ext.P3 is so explicit that it is a pure contract appointment and is nothing beyond a contract poor and simple. Clause (ii) specifies the emoluments and Clause (iv) clearly rules out any right for the petitioner to bargain for anything more. The reference made to Rule 100 and Ext.P6 Government order are totally out of place and misconceived. The writ petition is without any merit.

In the result, the writ petition is dismissed. No costs.

THOTTATHIL B.RADHAKRISHNAN
Judge

kkb.

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THOTTATHIL B. RADHAKRISHNAN, J

O.P.NO.20605 OF 2000

JUDGMENT

25th MAY, 2007.

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